

FILED
IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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CLERK OF COURTS
CUYAHOGA COUNTY
WARREN DOLEZAL
12553 Drake Road
North Royalton, Ohio 44133

and

JACK GALLAGER
1533 East 195th St.
Euclid, Ohio 44117

and

JEFFREY DOBRANSKY
8783 Avery Road
Broadview Heights, OH 44147

Plaintiffs, Individually And On Behalf Of
All Others Similarly Situated

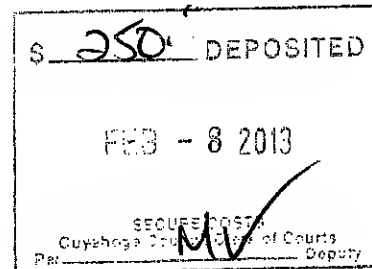
v.

CUYAHOGA COUNTY
c/o Edward Fitzgerald, County Executive
Cuyahoga County Administration Building
1219 Ontario Avenue
Cleveland, OH 44113

Complaint
CASE NO. MAUREEN CLANCY
CV 13 801116

JUDGE

CLASS ACTION COMPLAINT
(Civ.R.23; O.R.C. 4112.02, 4112.14,
4112.99; O.R.C. 124.14, 124.34; Ohio Const.
Art. XV; Declaratory And Injunctive Relief)



This Ohio Civil Rule 23 Class Action Complaint is brought on behalf of all classified employees in the Civil Service of Cuyahoga County, who since January 1, 2010, have had their compensation, pay, salary, hourly wage, longevity and/or benefits reduced:

- without cause, in violation of the Ohio Constitution, the Ohio Revised Code, the Ohio Administrative Code and statewide public policy, and/or
- based on their age, in violation of O.R.C. Sections 4112.02 or 4112.14 or 4112.99, or O.R.C. Section 124.14, and/or
- based on politics, in violation of O.R.C. Section 124.14

The Complaint seeks:

- the formation & certification of a class of affected employees, and
- a declaration of the invalidity, ab initio, of County Ordinances, Rules & Regulations, and all acts taken pursuant thereto, which have unlawfully reduced the pay, compensation, salary, hourly wage, longevity and/or benefits of classified employees in the Civil Service of the County, and
- the restoration of all back pay, compensation, salary, hourly wage, longevity and/or benefits lost by members of the Class, and
- all relief available to any employee who suffered age discrimination in violation of Ohio law, including but limited to attorneys fees and all costs and expenses of litigation,
- all relief available to classified employees in the civil service, who suffered adverse employment practices as a result of politics, including but not limited to attorneys fees and all costs and expenses of litigation, and

- declaratory judgment, and injunctive relief, enjoining and preventing any further discrimination or loss of compensation, or reclassification, in violation of the Ohio Constitution, Ohio Revised Code, and public policy.

Now come Plaintiffs, through counsel, and for their Claims for Relief, state, aver and allege as follows:

JURISDICTION AND VENUE

1) Each of the named Plaintiffs is a classified employee in the Civil Service of Defendant Cuyahoga County, Ohio.

2) The named Plaintiffs all reside in Cuyahoga County, but Members of the Class live in Lake, Summit and Lorain Counties. As a charter county, the Defendant is a body politic, capable of being sued. O.R.C. Section 301.22. The County is the employer of each Plaintiff and each member of the Class. The Plaintiffs' places of employment and the place where relevant conduct occurred are almost entirely within Cuyahoga County.

3) The Courts of Common Pleas have direct jurisdiction of actions which include claims of statutory violations, including claims of discrimination, brought by classified employees of the Civil Service. Dworning v. City of Euclid. The claims of the Class are for violations of O.R.C. Sections 4112.02, 4112.14, 4112.99, 124.14, 124.34 and other Sections and Regulations pertaining thereto.

4) The claims of the Class also include claims for violation of the Ohio

Constitution, a Declaration of the public policy of Ohio, a Declaration invalidating certain actions of the Defendant County, class certification, injunctive relief, and other remedies which no civil service commission or board has jurisdiction to rule on, declare, decree, order or enact.

5) The individual and the class as a whole cannot obtain full and final relief in any forum other than a Court of Common Pleas. No civil service commission, including the State Personnel Board of Review, has jurisdiction to hear their claims or grant the requested relief, individually or as a class. The only witnesses at a classification hearing are the employee, their supervisor, and a representative of the County. And, the only issue is whether the employee's duties fit the classification description. OAC 124-7-03. The County simply changed descriptions, and pay scales, and then "reclassified" the Plaintiffs and the Class downward. This is simply a logical tautology (e.g., by changing the description of "mule" to "a member of the family equidae capable of winning the Triple Crown," Secretariat can be reclassified as a mule). And, evidence of disparity in the treatment of classified employees is inadmissible. OAC 124-7-03, 124-07-09. The official Letters from the County Department of Human Resources providing the Individual Plaintiffs notice of their reclassification, each stated "certain claims, such as claims of discrimination or harassment, do not fall under the jurisdiction of the HRC." And, the Human Resource Commission of Cuyahoga County is the very entity that formulated and recommended the illegal amendments to Ohio law that form the basis of the Plaintiffs' claims for violation of Ohio's Civil Service, and cannot be expected to declare its own actions to be illegal. (Exhibit A). And, because no member of the Class suffered an adverse employment consequence as a result of disciplinary action, no member of the class may appeal an adverse decision by a civil service commission to a Court of Common Pleas. The County Ordinance declaring the County's alleged right to commit the breaches at issue here states that classified employees may appeal adverse

decisions of the HRC to the Court of Common Pleas, as “allowed by general law.” But this is an artful deception. There is no “general law” on the subject, only O.R.C. Section 124.14, which only allows a right of appeal to employees who have been demoted or terminated for disciplinary reasons. And, the language of that same Ordinance abolishes even that limited right. This Court is the only hope for the Plaintiffs and the Class.

THE INDIVIDUAL PLAINTIFFS

6) Plaintiff and Class Representative Warren Dolezal is an employee of the Department of Public Works, fka the County Engineer. For 22 years, Mr. Dolezal has been a hard-working county employee, with no disciplinary history. Mr. Dolezal has a college degree in Construction Science. He is age 61. Prior to working for the County, he had an additional 20 years’ experience in the construction of bridges and roads for major contractors. In October, 2012 he was reclassified downward, to Assistant Maintenance Superintendent, and his pay reduced 13%. But his duties and responsibilities have remained the same. In addition, his compensation was reduced by the elimination of overtime, the elimination of compensation time, and the reduction of accrued benefits, and pension benefits. And, Mr. Dolezal has been required to work additional hours per week, for the new, lower pay. Like all of the Individual Plaintiffs, Mr. Dolezal's pension and retirement benefits are directly affected by any reduction in pay, as County pension plans pay a percentage of the average pay during an employee's three highest paid years. “Cause” was never a basis for Mr. Dolezal’s reclassification, or the reduction in his compensation and benefits, or any adverse action taken against him.

7) Plaintiff and Class Representative Jeffrey Dobransky has held a classified position as a Bridge Inspector with the Department of Public Works, fka the County Engineer, for 27 years. He has had no disciplinary history. He is age 56. In October, 2012 he was reclassified downward from Bridge Inspector III to Senior Bridge Inspector, and his pay reduced nearly 10%, or \$6,000, to take effect October 21, 2012. And, Mr. Dobransky has been required to work additional hours per week, for the new, lower pay. But his duties and responsibilities have remained the same. In addition, like Co-Plaintiff Warren Dolezal, his compensation was reduced by the elimination of overtime, the elimination of compensation time, and the reduction of accrued benefits, and pension benefits. "Cause" was not a basis for Mr. Dobransky's reclassification, or the reduction in his compensation and benefits, or the basis for any adverse employment action taken against him. Mr. Dobransky has a college degree, numerous certifications, 27 years of experience leading teams of inspectors who inspect critical bridges all over the County, to ensure compliance with guidelines, rules and regulations of the Ohio Department Of Transportation, and the Federal Highway Administration, to ensure our bridges and highways are safe. The County's reclassification demoted Mr. Dobransky, rather than promote him to the pay and classification level of comparably – educated, experienced and trained Bridge Inspectors in other government agencies. The Defendant County admitted that it set Mr. Dobransky's reclassified salary without regard to comparable salaries paid for similar work by any other government entity.

8) Plaintiff Jack Gallagher has been employed by the County for 28 years, without disciplinary history, in the Department of Weights & Measures. Mr. Gallagher's job duties include ensuring that the pumps at all gas stations are properly calibrated, and that scales and weights used in grocery stores and shops are accurate. In mid-2012, Mr. Gallagher was placed into a new pay classification, and his pay reduced 13.5%, though his duties, responsibilities and

title remained the same. Like his Co-Plaintiffs, his compensation was also reduced by the elimination of overtime, the elimination of compensation time, and the reduction of accrued benefits, and pension benefits.

FACTS COMMON TO ALL CLAIMS

Ohio's Civil Service Laws

9) It is a fundamental public policy of the State of Ohio that the critically necessary daily work of the State, the Counties, and Cities be performed by trained, skilled, competitively tested, classified employees of the Civil Service, who are independent of politics, and who have Constitutionally and legislatively protected tenure during all periods of good behavior and efficient service. Civil servants in Ohio are not employees at will, nor may they suffer adverse employment actions except in accordance with established procedures and rules. This public policy of Ohio is rooted in Article XV, Paragraph 10, of the Ohio Constitution, which reads as follows:

“§ 10. Civil service appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.”

10) The underlying purposes which led to the passage of Ohio Const. art XV, § 10 were to secure the maximum of efficiency and integrity in the public service, to restrain persons occupying positions in the classified service from political activity; to prevent discrimination for political, religious, or racial reasons; and to guarantee permanent tenure to persons in the classified service. State ex rel. Neffner v. Hummel, 142 Ohio St. 324, 51 N.E.2d 900 (1943).

11) The appointment, tenure, promotion, removal, transfer, lay-off, suspension, reduction, reinstatement or dismissal and working conditions of persons in the classified civil service of the state, the several counties, cities and city school districts thereof, are regulated exclusively by Ohio Const. art XV, § 10, and the laws, rules and regulations enacted in pursuance thereof.

Hagerman v. Dayton, 147 Ohio St. 313, 71 N.E.2d 246 (1947).

12) O.R.C. Section 124.34 expressly prohibits all of the adverse employment actions which the County has taken against the individual Plaintiffs and the Class. It reads in relevant part as follows:

“The tenure of every officer or employee in the classified service of the state and the counties,shall be during good behavior and efficient service. No officer or employee shall be reduced in pay or position, fined, suspended, or removed, or have the officer's or employee's longevity reduced or eliminated, except as provided in *section 124.32 of the Revised Code*, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony.” (emphasis added)

13) All of the individual Plaintiffs and all members of the Class suffered adverse employment actions in direct violation of O.R.C. Section 124.34. The Defendant did not cite any of the behavioral or performance causes set forth above as grounds for the adverse actions taken against any of them.

14) The actions taken against all of the Individual Plaintiffs, and nearly every member of the Class, were reductions in both pay and position as a result of a reclassification, in direct violation of O.R.C. Section 124.14, which prohibits a reduction in compensation as a result of

reclassification. If a reclassification results in the employee being put into a new position with a lower pay rate, the reclassified employee's pay is "frozen" at the employee's pre-reclassification rate, known as "Step X." The reclassified employee may not get a raise until the pay rate in the new classification exceed the reclassified employee's Step X. The relevant language is as follows:

"§ 124.14. Job classification and assignment to pay range; establishment of county personnel department

(A) (1) The director of administrative services shall establish, and may modify or rescind, by rule, a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state....The director shall, by rule, assign each classification, either on a statewide basis or in particular counties or state institutions, to a pay range established under *section 124.15* or *section 124.152 of the Revised Code*.

(2) The director of administrative services may reassign to a proper classification those positions that have been assigned to an improper classification. **If the compensation of an employee in such a reassigned position exceeds the maximum rate of pay for the employee's new classification, the employee shall be placed in pay step X and shall not receive an increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation.**" (emphasis added)

15) The individual Plaintiffs and nearly all the members of the Class had their compensation and pay reduced after they were reclassified, in direct violation of O.R.C. Section 124.14 and OAC 123:1-7-22.

16) OAC 123:1-7-22 defines "Step X" and its operation:

"123:1-7-22. Reassignments resulting in placing an employee in step X.

(A) An employee whose position is determined to be over classified shall be properly classified and may be placed in step X pursuant to *section 124.14 of the Revised Code* **only** as a result of any of the following:

- (1) A position audit conducted in accordance with rule *123:1-3-01 of the Administrative Code*;
- (2) A class plan change;

(3) At the approval of the director.

(B) **An employee that is assigned into a lower classification shall be placed in the step within the new pay range that provides the employee with compensation that is equal to his or her current rate or that provides the least amount of increase, hut no decrease, in pay. Appointing authorities shall consider all applicable pay supplements to ensure that an employee reassigned pursuant to this rule does not receive a decrease in pay. If the employee's base rate of pay exceeds the maximum rate of pay in the new pay range, the employee shall he placed in step X.**

(C) **An employee placed in step X shall not receive an increase in compensation until the maximum rate of pay for the employee's classification exceeds the employee's hase rate of pay.” (emphasis added)**

The County Suspends The Application of O.R.C. 124.01, Et Seq. in Cuyahoga County

17) Upon information and belief, the County Executive and his Department of Human Resources believe the County is now a home rule “Imperium in Imperio,” an empire of its own within the State of Ohio, which has the unfettered power to ignore and amend the Ohio Constitution and Ohio Revised Code at will, and within which the tenure and security of the classified civil service are not protected by law but at the sufferance of the County Executive and his Director of Human Resources.

18) Upon information and belief, the County Executive and his Department of Human Resources base this belief on the Cuyahoga County Ordinance 2011-0043 (hereinafter, “the Ordinance” or “2011-0043”) (See Exhibit A).

19) County Ordinance 2011-0043 is the genesis of the direct violations of O.R.C. Sections 124.34, 124.14, and OAC Regulation 123:1-7-22 at issue. In 2011-0043, the County first acknowledges the application of all of the Ohio laws of Civil Service (set forth at O.R.C. 124.01, et seq) to the County. It then attempts to “amend” O.R.C. Sections 124.14 and 124.34, and OAC

123:1-7-22, for the purpose of clothing the pay reductions, classification reductions, benefits reductions, longevity reductions, and other adverse employment actions against the Individual Plaintiffs and the Class with the camouflage of legality. For the reasons set forth, and in Counts I and II below, this Court should declare the Ordinance illegal, null and void, ab initio.

20) To begin with, County Ordinance 2011-0043 states that the County adopts in its entirety, without modification, subpart (G) of O.R.C. Section 124.24, which reads in relevant part as follows:

“(G) (1) Each board of county commissioners may, by a resolution adopted by a majority of its members, **establish a county personnel department to exercise the powers, duties, and functions specified in division (G) of this section.** As used in division (G) of this section, "county personnel department" means a county personnel department established by a board of county commissioners under division (G)(1) of this section.

(2) (a) Each board of county commissioners, by a resolution adopted by a majority of its members, **may designate the county personnel department of the county to exercise the powers, duties, and functions specified in sections 124.01 to 124.64 and Chapter 325. of the Revised Code with regard to employees in the service of the county,** except for the powers and duties of the state personnel board of review, which powers and duties shall not be construed as having been modified or diminished in any manner by division (G)(2) of this section, with respect to the employees for whom the board of county commissioners is the appointing authority or co-appointing authority.” (emphasis added)

By adopting this provision, to formally establish the County’s own Civil Service Commission and Department of Human Resources, the County specifically agreed that the newly created Department of Human Resources was to exercise the powers, duties and functions set forth in O.R.C. Sections 124.01 to 124.64, and 325, that is, the Civil Service Law of Ohio. But it has violated those laws ever since.

21) After agreeing to follow Ohio’s Civil Service Law, County Ordinance 2011-0043 then attempts to decimate it, by asserting the County’s alleged right to amend Ohio law so as to eliminate any and all tenure and compensation security of the classified civil service throughout

the County, which has been public policy and a matter of statewide concern for a century or more. If allowed, and adopted by other political subdivisions of the State, this Ordinance would lead to a downward spiraling loss of classified workers' rights throughout the State. Long before Counties' service functions get outsourced to India, the Civil Service would be staffed with overworked, underpaid workers, with low morale, high turnover, poor service, and no institutional memory of critical history, records, procedures, bridges, roads, maps, drawings, and everything else necessary for the County to perform its legal obligations, which are mandated by the State, and critically necessary to our society. Managing and staffing the governments of the political subdivisions of the State of Ohio as if they were a Kinko's or an offshore call center is unacceptable and a matter of statewide concern: miscopying a few documents is one thing, but losing deeds or causing a bridge collapse is another.

The Illegal Reclassification Program

22) After the new charter government took power, HR required members of the Class to fill out multipage Comprehensive Position Questionnaires (hereinafter "CPQs"), which required them to describe their job duties and assignments in great detail. After receiving (and presumably reviewing) hundreds of these CPQ's, the County neither changed the classification of, nor reduced the pay or compensation of the Plaintiffs or the members of the Class.

23) On or about the end of 2011 and beginning of 2012, the County Executive and Department of Human Resources formulated an illegal reclassification program ("the illegal 2012 reclassification program"). This program consisted of creating a new set of job titles for the same work, drastically lower pay ranges, and informing the Plaintiffs and the Class that they would now be doing the same work with a new job title and a massive pay cut. The Department

of Human Resources went through the motions of having employees fill out a second Comprehensive Position Questionnaire, the reclassifications and pay cuts were announced so soon after they were turned in, that there was no time to analyze them. And no need to: the fate of the Plaintiffs and the Class had been decided long before the useless exercise of filling out CPQ's. All objections to these reclassifications and pay cuts have been ignored, overruled or overturned.

24) The purging began in early 2012. Though both the County and Archer had not taken any action to change their classification or pay after the first round of CPQ's, in 2012, Warren Dolezal, Jeffrey Dobransky, Jack Gallagher, and the hundreds of other Members of the Class each received a letter informing them they were now in a new, lower classification, with pay cuts ranging up to 45%, and loss of other compensation and benefits. Prior to carrying out these illegal reclassifications and cuts in compensation and benefits, the County HR Department did not come out and observe them performing their work, or interview them. Nor did the HR Department ever allege any of the statutorily-recognized bases for their reclassification and pay cuts, e.g., drunkenness, immorality, being discourteous to the public, insubordination, etc.

25) And, members of the Class, with few exceptions, have had their Job Classification Title reduced to a position which does not describe their duties and is intended to humiliate them by "busting them to a lower rank" in hopes they will quit. The County's actions were and continue to be deliberately intended to make the conditions of their work so intolerable no reasonable person could tolerate them, i.e., to constructively discharge them. Members of the Class who have suffered the deepest cuts, 33%, 45%, etc. have lived in a state of financial desperation; some have declared bankruptcy. Some retired in a desperate attempt to save their pensions and accumulated benefits.

26) Prior to September, 10, 2012, only the Ohio Director of Administrative Services had the authority to set classifications and pay ranges for County employees. O.R.C. Section 124.14 (A). All of the reclassifications at issue here were formulated by the County prior to September 10, 2012, not by the Director of Administrative Services. (Plaintiffs Dolezal and Dobransky were first given notice of their reclassifications in July, 2012, to take effect on October 21, 2012). This is another reason to declare the County's actions illegal.

The County's Actions Are Also Illegal Because They Are Rooted in Politics

27) An important public policy of Ohio is that employees in the civil service perform their work wholly free from politics. This public policy is embodied in the following language of O.R.C. Section 124.34, which expressly prohibits politics as a basis for the reclassification of employees, and/or the reduction in their pay or benefits:

"The board shall disallow any reclassification or reassignment classification of any employee when it finds that changes have been made in the duties and responsibilities of any particular employee for **political**, religious, or **other unjust reasons**." (emphasis added)

The discussion which follows is to demonstrate that the Defendant's unprecedented attacks on the tenure of the older classified employees of the County expressly violates, inter alia, the prohibition on reclassification for unjust political reasons.

28) The illegal conduct at issue is one of the many consequence of a raid conducted by 175 FBI agents of certain offices on the Cuyahoga County Administration Building, Justice Center, and other locations in and about Cuyahoga County. Thereafter, and continuing through the

present, a highly charged political atmosphere has existed arising out of the ensuing “corruption scandal.” Local media coverage, led by the newspaper, convinced the voting public that “corruption” has permeated every level of every significant office in the Administration of Cuyahoga County, including the Auditor’s office, Recorder’s office, Treasurer’s office, Coroner’s Office, Office of the County Engineer, and even the Judiciary. As a result of ceaseless front-page media coverage, the public was whipped into the frenzied conviction that all employees of certain county offices were only hired through personal or political connections, that they were all overpaid, but barely worked, that the work they performed was incompetent, and they should all be fired. (Exhibits B, C, & D)

27) The media convinced civic leaders and the voting public that, somehow, a Charter form of government was the proverbial silver bullet that would kill corruption forever. For the first time in its history, the voters of Cuyahoga County decided to change the form of County Government.

28) The new County Executive’s margin of electoral victory was clearly the result of campaign promises to sweep clean the ranks of County employees, and his political career depends on continuously supplying Cleveland’s newspaper and online media with fresh accounts of “corruption-cleansing”: budget cuts in “corrupt departments,” dollars “saved,” terminated employees, or best of all, the names of the latest “reprobate” he has rooted out, and tales of their black and dirty misdeeds. (See Exhibits B, C, & D) Immediately after the election, and with no formal power to do so (having not been sworn into Office), the County Executive held numerous press conferences announcing sweeping terminations of employees, because “it isn’t just about campaign promises, but actions.” He announced, inter alia, his termination of the entire Staff of the Board of Revision, and a series of layoffs which would save taxpayers \$1,000,000.00 in

payroll, etc. to “start with a clean slate,” even though he acknowledged many of those terminated had “rendered excellent service.” He would give the voters what they wanted, “let the chips fall where they may.”

29) Soon after taking office, the County Executive openly told the classified employees of the Auditor’s Office, that they should all “do the right thing and turn in their pink slips,” and that he wanted to terminate them all if he could find a way.

30) The County Executive formed a new Department of Human Resources (hereinafter referred to as “the HR Dept” or “HR”), headed by the wife of one of his best friends, with an annual budget of \$3,000,000.00. With reckless disregard and defiance of Ohio’s century-old Civil Service law, and the Ohio Constitution, the Executive, with the ratification and consent of County Council, has set about, for political self-aggrandizement, to illegally and dramatically reduce the compensation, working conditions, classification and self-respect of devoted, hard-working, diligent civil servants, who have put in as many as 27 years of service with the County, are all over 40, committed no crimes, and had nothing to do with the “corruption scandal.” Many were working for the County long before Russo or Dimora were elected, even before the current County Executive had a driver’s license. These employees first learned about their pay cuts in the newspaper, long before they were notified by the Department of Human Resources. This demonstrates that the Executive and HR Dept were working hand-in-glove with the media to generate their own self-serving political publicity. (See Exhibits B, C, & D)

31) The Individual Plaintiffs and the Class are hard-working civil servants, who have put in decades of faithful service, without being disciplined, or engaging in corruption or crime. They are guilty of nothing. For decades, they are the ones who have kept the County running smoothly, collecting taxes, recording deeds and mortgages, running the Courts, plowing snow,

building bridges, maintaining roads, managing the solid waste from all our homes. Collectively, they have put in 10,000 years or more of service to the County. They have performed faithfully, notwithstanding the abuses of power and corrupt acts of the highest level politicians. They are pawns in a political struggle, whose self-respect, dignity and financial well being have been sacrificed for headlines and political capital.

33) For the last several years, the Executive and his hand-picked Department of Human Resources, with the unanimous blessing and consent of County Council, have devised a series of illegal actions to try purge the County of every classified employee over the age of 40, which is illegal age discrimination. It is also an illegal political purge of employees perceived as the product of patrimony in prior administrations. They have illegally reduced their pay and benefits, they have given them humiliating titles, they have given them unwarranted poor evaluations, they have increased their hours but not their pay, they have had their longevity shortened by as much as a decade, etc., all with the intent of making the conditions of their employment so intolerable no reasonable person could withstand it. Most recently, HR has informed Supervisors that in rating classified employees' performance, they are not to give any score higher than 3 out of 5, regardless of performance. A "3" means the employee "meets expectations," a score which merits no raise, and is the equivalent of a "C" grade in school.

34) The allegedly "independent" Human Resource Commission (whose Hearing Officers are attorneys paid by the County, after winning the lowest bid for their services), have confirmed and ratified all these actions taken against hundreds of classified employees of the Civil Service, in all but a handful of appeals. Since it was the Human Resource Commission which drafted County Ordinance 2011-0043 (See Exhibit A), there is no possibility that it will declare the illegality of its Ordinance, or uphold any reversal of any single demotion or pay cut of any

classified employee of the County. As the Director of the Department of Human Resources told the newspaper, “most employees will fight the cuts, but I do not anticipate many will prevail.” (Exhibit C). The Individual Plaintiffs’ only remedy for the breach of their rights by the County is this action.

34) The Executive’s HR staff and HRC have imported all of the anti-labor, pro-management tricks of the HR trade from the private sector. But unlike private sector employees, who are presumptively employees at will, the Plaintiffs and members of the Class have rights of tenure found in the Ohio Constitution and the Ohio Revised Code, which the Defendant County’s HR Department cannot nullify with the stroke of a pen.

35) By these and other actions which would make any Wall Street corporate raider proud, the Executive, his HR staff, and County Council have unlawfully cut the wages, salary, hourly pay, compensation and benefits of, upon information and belief, over 90% of the County’s classified civil service over age 40, even as the expenses of the salaries of the Executive Director and his hand-picked circle of Department Directors and executive staff, including the highest salaries by far ever paid any employee of the County, climb ever skyward. The combined yearly budgets of the County Executive and the Department of Human Resources are nearly \$5,000,000.00, or more than 7 times the total “savings” achieved at the expense of illegally reducing the pay of the classified employees of the former Auditor’s Office alone.

36) Therefore, the illegal 2012 reclassification program at issue in this case has produced no net savings to the County, but plenty of media attention (translation: political capital) for the County Executive and Council, both elected offices. When confronted by classified employees expressing anger and outrage over their illegal job classifications, the HR Director and her Staff have been indifferent, if not callous, telling employees whose family finances have been

devastated, “by the time it gets sorted out, we won’t be here,” meaning they are confident they and the Executive will occupy a higher political office when these claims are done winding their way through the Courts.

Age Discrimination

37) In addition to being a violation of the Ohio Constitution, O.R.C. Sections 124.14, and 124.34, as described above, the actions taken by the County constitute age discrimination. Each of the Individual Plaintiffs was well over the age of 40 at the time the County reclassified them and cut their pay and benefits. Official data produced by the Human Resource Commission, the personal knowledge of the Individual Plaintiffs, and other members of the Class known to Plaintiffs’ counsel, all leads to the conclusion that on the order of 95% of all classified employees over the age of 40 also had their pay and benefits cut during the illegal 2012 reclassification program. Some experienced pay cuts in the range of 33-45%. A handful of classified employees over the age of 40 received very small increases in pay, totaling about \$18,000 in the aggregate. And, classified employees in the same departments, work units, and groups, who were substantially similarly situated, but who were under 40 were, with only one known exception, spared the axe of these adverse employment actions, without legal justification (and the exception was 39 years old).

38) Upon information and belief, and based on official data, personal knowledge, and reasonable investigation, the probability of a member of the protected class (employees over 40) suffering a pay cut and other adverse employment actions, including reclassification, approaches 95%, whereas the probability of a substantially similarly-situated classified employee under the age of 40 suffering an adverse employment action approaches 0%.

CLASS ACTION ALLEGATIONS

39) The Plaintiffs and Members of the Class are all classified employees who have Constitutional and statutory rights of pay tenure, and who have all suffered loss of pay, compensation, wages or salary, and/or benefits, and/or benefits linked to their compensation, including but not limited to retirement and pension benefits, overtime, exchange time, accumulated sick pay, and vacation time. No individual Plaintiff or member of the Class was reclassified, or suffered any adverse employment action, as a result of disciplinary action or cause.

40) Each individual Plaintiff, and all members of the Class are members of a protected group, namely employees over the age of 40 years old. Upon information and belief, no similar adverse employment actions resulting in any, or any comparably significant and devastating, reductions in pay and benefits have been taken by the Defendant against classified employees under the age of 40.

41) Plaintiffs bring this action pursuant to Rules 23(A) and 23(B) of the Ohio Rules of Civil Procedure.

42) This is a class action filed on behalf of the Class, defined as all classified employees in the Civil Service of Cuyahoga County, who since January 1, 2010, have had their compensation, pay, salary, hourly wage, longevity and/or benefits reduced:

- a. Without cause, in violations of the Civil Service law of Ohio, found in the Ohio Constitution, the Ohio Revised Code, the Ohio Administrative Code and statewide public policy, and/or

- b. Based on their age, in violation of O.R.C. Sections 4112.02, or 4112.14, or 4112.99, or 124.14, and/or
- c. Based on politics, in violation of O.R.C. Section 124.14.

43) The Class satisfies the requirements of Rule 23(A) and 23(B) of the Ohio Rules of Civil Procedure including numerosity, typicality, commonality, superiority and adequacy.

44) The members of the Class are so numerous that joinder of all members would be impracticable. The County employs approximately 1,761 classified employees. As a matter of public record, at least 400 classified employees were reclassified in 2012 alone. Over 90% of those employees are, upon and information and belief, Members of the Class. The names and addresses of all of the Class members can be ascertained from the books and records of the Defendant County. Notice can be provided to the Class by a combination of published notice and first-class mail, using techniques and a form of notice similar to those customarily used in class actions. Or, Notice can be provided by the County in the same manner it notifies employees of routine personnel matters.

45) There are questions of law or fact common to the class. Plaintiffs' claims are typical of the claims of the other Class members, all of which result from the same breaches of the Ohio Constitution, Ohio Revised Code, and Ohio Administrative Code, occurring at the same time, for the same purpose, under color of the Cuyahoga County Charter and Ordinance 2011-0043.

46) The common questions of law and fact exist as to all Class members and predominate over any questions affecting solely individual Class members. Among the questions of law and fact common to the Class are:

- a. Did the Defendant violate Article XV, Paragraph 10 of the Ohio Constitution?

- b. Did the Defendant act in excess of the express authority and powers granted to the Defendant under the Ohio Constitution?
- c. Did the Defendant act in excess of the express authority and powers granted to the Defendant under the Ohio Revised Code?
- d. Did Defendant engage in age discrimination in violation of O.R.C. Chapter 4112.01, et seq?
- e. Did Defendant violate O.R.C. Section 124.14, prohibiting the reduction in pay of a classified employee, after a reclassification, without cause?
- f. Did Defendant violate O.R.C. Section 124.34, prohibiting the reduction in pay or benefits of any classified employee other than for cause?
- g. Did Defendant violate OAC Regulation 123:1-7-22, which mandates that classified employees shall not suffer a pay decrease after a reclassification?
- h. Did Defendant violate O.R.C. Section 124.14 by reclassifying employees based on age, or for political reasons?

The Claims and defenses of the representative parties are typical of the claims or defenses of the class.

47) The representative Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs have retained competent counsel experienced in class action litigation to further ensure such protection and to prosecute this action vigorously. The named Plaintiffs do not have any interests antagonistic to, or in conflict with, the Class.

48) This matter is best prosecuted as a Class Action. The prosecution of separate actions by or against individual members of the class would create a risk of:

- a. Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the County. Were Judges in separate actions to rule differently on all, any one, or any combination of the numerous issues presented by this Complaint, the County would find itself complying with the Orders of one Court at the risk of being held in contempt by another.
- b. adjudications with respect to individual members of the class, which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; or

49) Through its illegal 2012 reclassification program, the County has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

50) The questions of law or fact common to the members of the class, described above, predominate over any questions affecting only individual members. A Class Action is superior to other available methods for the fair and efficient adjudication of the claims and controversy at issue here. There is no other litigation concerning the controversy already commenced by or against members of the class.

51) No special difficulties are likely to be encountered in the management of this Class Action. The members of the proposed class are current employees of the County. The County is aware, to the penny, of the amount of the cuts in pay, compensation and benefits suffered by the Plaintiffs and Members of the Class. The County communicates with them on a regular basis.

The County can pay any damages directly into their paychecks, pension plans and benefit accounts, etc.

52) A class action is superior to other available methods for the fair and efficient adjudication of this controversy. On the whole, the damages suffered by individual Class members are relatively small, relative to the expense and burden of individual litigation, making it virtually impossible for the Class members to seek redress for the wrongful conduct alleged. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

COUNT I

(Statutory Violations – Reductions Without Cause-O.R.C. Sections 124.14 & 124.34)

54) Plaintiffs reincorporate as if fully rewritten herein each and every allegation of this Complaint, and further state that the Defendant County has, as aforescribed, violated the plain mandate of O.R.C. Section 124.34 that no classified employee “shall be reduced in **pay or position**, fined, suspended, or removed, **or have the officer's or employee's longevity reduced or eliminated**” without statutory cause. (emphasis added)

55) The Defendant County has, as aforescribed, also violated the plain mandate of O.R.C. Section 124.14 that if an employee is reclassified, and if

“the compensation of an employee in such a reassigned position exceeds the maximum rate of pay for the employee's new classification, the employee shall be placed in pay step X and shall not receive an increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation.”
(emphasis added)”

56) And, the Defendant County has, as aforescribed, violated the regulation set forth at

OAC 123-1-7-22, which carries into effect the prohibition on pay decreases after a reclassification, set forth at O.R.C. Section 124.14.

57) As a direct and proximate result of the County's aforescribed violations, the Plaintiffs and the Members of the Class have suffered damages including loss of pay, compensation, title, position, benefits and pension.

58) The Plaintiffs cannot, for the reasons set forth above, pursue their rights, founded in the Constitution, Revised Code and Administrative relief in any other forum. For every right, there must a remedy.

WHEREFORE, Plaintiffs further pray for judgment against the Defendant, for full, fair and just compensation for themselves, and the members of the Class, for all damages directly and proximately flowing from the Defendant County's aforescribed violations of the Ohio Constitution, the Ohio Revised Code, and the Ohio Administrative Code, including, but not limited to:

- a. Reinstatement of all prior job classifications, pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits.
- b. All lost back pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits.
- c. All financial harm reasonably foreseeable by Defendant at the time it carried out its adverse employment actions.
- d. Attorney's fees, and all costs and expenses of litigation.
- e. All such further relief at law, or in equity, that is fair, just and equitable.

- f. Injunctive relief, enjoining and prohibiting any further violations of law by the Defendant.

COUNT II

(Declaratory Judgment – O.R.C. Sections 2721.01, et seq.)

59) Plaintiffs reincorporate as if fully rewritten herein, all the preceding allegations of this Complaint, and further state that each Individual Plaintiff, and member of the Class, is a person whose rights, status or other legal relations are affected by the Constitutional Provisions, Statutes, and Rules set forth in Count I above, and who, pursuant to O.R.C. Section 2721.03, may have determined the question of the construction and validity of such constitutional provision, statutes and rules by this Court.

60) County Ordinance 2011-0043, and all actions taken pursuant thereto, are illegal, null and void, because they violate Article XV, Paragraph 10 of the Ohio Constitution, and the laws passed pursuant thereto, which govern the Civil Service in every county.

61) Further, County Ordinance 2011-0043 and all actions taken pursuant thereto, are illegal, null and void, because they violate the Public Policy of Ohio on a matter of statewide concern, namely the tenure and rights of the classified employees of the Counties of Ohio, who represent a large percentage of the classified Civil Service of Ohio.

62) Further, County Ordinance 2011-0043 and all actions taken pursuant thereto, are illegal, null and void, because they violate O.R.C. Sections 124.14 and 124.34, and OAC 123:1-7-22.

63) Further, County Ordinance 2011-0043 and all actions taken pursuant thereto, are illegal, null and void, because County Ordinance 2011-0043 on its face, adopted without revision

Subpart of O.R.C. Section 124.14 (G), and thus empowered and required the County Department of Human Resources to the duties, obligations and requirements of Ohio Civil Service Law, set forth at O.R.C. Sections 124.01 to 124.64, and Section 325.

64) Further, County Ordinance 2011-0043 and all actions taken pursuant thereto, are illegal, null and void, because the reclassifications at issue were all formulated by the County prior to September 10, 2012. Prior to September 10, 2012, only the Director of Administrative Services had the authority to said classifications and pay ranges for county employees. O.R.C. Section 124.14 (A).

66) Further, County Ordinance 2011-0043 is illegal, null and void, because O.R.C. Section 302.07 expressly requires newly installed forms of county government to recognize all rights and obligations accrued and established, which would include the Civil Service tenure of its employees. At the time the new charter government took office in January, 2010, the rights of the Plaintiffs and the members of the Class at issue were (and continue to be) vested in the Ohio Constitution, the Ohio Revised Code, the Ohio Administrative Code, and the Cuyahoga County Employees Manual. In Loudermill v. Cleveland Board of Education (1985), 470 U.S. 532, the United States Supreme Court held:

“Property interests are not created by the Constitution, they are created, and their dimensions are defined, by existing rules or understandings that stem from an independent source, such as state law. . . *Board of Regents v. Roth, supra*, at 577. *See also Paul v. Davis*, 424 U.S. 693, 709 (1976). The Ohio statute plainly creates such an interest. Respondents were ‘classified civil service employees,’ Ohio Rev.Code Ann. § 124.11 (1984), entitled to retain their positions ‘during good behavior and efficient service,’ who could not be dismissed ‘except . . . for . . . misfeasance, malfeasance, or nonfeasance in office,’ § 124.34. **The statute plainly supports the conclusion, reached by both lower courts, that respondents possessed property rights in continued employment.** 470 U.S. at 538-539.

67) Further, Ordinance 2011-0043 is illegal, null and void because the County does not have authority to disregard the relevant provisions of the Ohio Constitution, or of the Ohio Revised Code, or the Ohio Administrative Code. Counties are creatures of statute, created for the purposes of carrying out the duties and responsibilities of the State. Counties have no powers not specifically granted to them by the Legislature. (e.g., the reason Counties issue dog licenses but not cat licenses is that the Ohio Legislature has not empowered Counties to do so). Even a charter form of government may only enjoy the “rights and privileges” conveyed to it “under the Constitution and laws of this state.” O.R.C. Section 301.22. In 1912, the Ohio Constitution was amended to grant home rule powers only to municipalities. The Ohio Constitution does not grant counties, regardless of their form of government, undiluted power to become imperium in imperio. The Cuyahoga Charter’s proclamation that the County has all powers of home rule afforded to municipalities, and all powers not expressly prohibited by law, is illegal: Counties do not have powers of home rule, and only have those powers expressly granted by the Legislature.

68) Further, County Ordinance 2011-0043 is illegal, null and void as it was enacted by a form of government not allowed under any Ohio law. Nowhere in the Ohio Revised Code is there provision for the creation of the County Executive + County Council form of county government. A County Executive + Board of County Commissioners is the only alternate form of county government, with or without a charter. O.R.C. Section 302.01, et seq. And, in the County Executive + Board of Commissioners alternative form of government, the Executive’s role is to administer and supervise the execution of the policies enacted by the Board of Commissioners, the Executive is only paid 1.6 times the pay of the Commissioners, and the Executive has fewer powers of appointment and veto than the Cuyahoga Executive (who is paid nearly 7x as much as Members of County Council).

69) Further, County Ordinance 2011-0043 is illegal, null and void as it contradicts Ohio law on a matter of statewide concern. No charter entity, even a municipality with a Constitutional grant of the power of home rule, can lawfully enact legislation that contradicts the general laws of Ohio on a matter of statewide concern. The Civil Service tenure of County employees is protected by the Ohio Constitution and the laws enacted therein, and is by definition, a matter of statewide concern. The County's Ordinance and actions completely undermine over a century of express, manifest, codified public policy, of both Ohio and Cuyahoga County.

WHEREFORE, pursuant to O.R.C. Section 2721.02, the Individual Plaintiffs for themselves, and on behalf of the entire Class, pray for a Declaration from this Court that the Cuyahoga Charter, County Ordinance 2011-0043, and all of the aforementioned adverse employment actions:

- a. Violate Article XV, Paragraph 10 of the Ohio Constitution,
- b. Are in excess of any authority and powers granted to the Defendant under the Ohio Constitution.
- c. Are in excess of and in violation of any authority given to Cuyahoga County by the Ohio Legislature.
- d. Violate O.R.C. Section 124.14, prohibiting the reduction in pay of a classified employee, after a reclassification, without cause.
- e. Violate O.R.C. Section 124.34, prohibiting the reduction in pay or benefits or longevity of any classified employee other than for cause.

- f. Violate OAC 123:1-7-22, which prohibits the reduction in pay of a reclassified employee, and requires they be placed in Step X.
- g. are unjust, in violation of O.R.C. Section 124.14.
- h. Were based on politics, in violation of O.R.C. Section 124.14.

COUNT III

(Age Discrimination – O.R.C. Sections 4112.02, 4112.14, 4112.99)

70) Plaintiffs reincorporate as if fully rewritten herein all the preceding allegations of this Complaint, and further state that the Defendant Cuyahoga County has engaged in employment discrimination based upon the age of the Individual Plaintiffs, and the members of the Class, in violation of Ohio law.

71) The County is an “Employer,” as defined at O.R.C. Section 4112.01(2), which includes any political subdivision of the State of Ohio.

72) Each Individual Plaintiff and each member of the Class is an “Employee” as defined by O.R.C. Section 4112.01(3).

73) At all times relevant, each Individual Plaintiff and member of the Class was aged 40 or over, and qualified by training, education, and job experience, to perform all duties and established requirements of the jobs they had performed prior to their pay being cut, and/or their position being reclassified, and/or the other adverse employment practices described above.

74) In addition, each Individual Plaintiff and member of the Class was physically able to perform all duties and meet all established requirements of the job. Indeed, nearly every one of them was performing the exact same job after their pay reduction, position declassification, and the loss of title, pay, benefits, etc. described above, as they performed before.

75) At all times relevant, no Individual Plaintiff, and no member of the Class, suffered any adverse employment action as the result of misconduct or cause, or any other basis allowed by law. The Individual Plaintiffs, and all members of the Class, had faithfully performed their job duties for years, if not decades, without any disciplinary action.

76) The County's claim that the cuts of pay, compensation, benefits, title and classification of the Plaintiffs and members of the Class were under color of law, were and are a subterfuge and pretext for massive age discrimination against classified employees over age 40. The County's actions were intended to create circumstances and conditions of financial duress, and humiliation, for the deliberate purpose of causing the involuntary resignation and/or early retirement of the Individual Plaintiffs, and members of the Class.

77) Certain members of the Class could no longer reasonably tolerate the working conditions to which the County's actions subjected them, and were constructively discharged.

78) As described herein, the County unlawfully discriminated against the Individual Plaintiffs and the members of the Class based upon their age, with respect to the tenure, terms, conditions, privileges and benefits of their employment, in violation of O.R.C. Section 4112.02. Such discrimination commenced in February, 2012, and has continued through the present.

79) In the alternative, Plaintiffs allege that the conduct of Defendant Cuyahoga County constitutes age discrimination in violation of O.R.C. Section 4112.14., against the Individual Plaintiffs, and member of the Class, who were effectively discharged without just cause from the position they held prior to their pay reduction, loss of compensation, loss of longevity, loss of accrued vacation time and benefits, and other adverse employment actions. In fact, each of the Individual Plaintiffs, and nearly every member of the Class, was both demoted from their prior

position, which, in combination with the reduction in pay, benefits, accrued vacation time, longevity, etc., which they suffered, was a discharge from their prior position.

80) Plaintiffs bring these two alternative claims for age discrimination pursuant to the unanimous decision of the Ohio Supreme Court in Dworning vs. City of Euclid, (1988), 119 Ohio St. 3d 83, and under the authority of O.R.C. Section 4112.99.

81) As the direct and proximate cause of the Defendant's age discrimination, as described above, Plaintiffs, and the Class, have suffered damages, including loss of their prior job classifications, pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits. In addition, they have suffered the emotional and mental distress, and anxiety, which is the reasonably foreseeable result of massive pay cuts, loss of benefits and pension, and being demoted to humiliating job classifications.

WHEREFORE, Plaintiffs further pray for judgment against the Defendant, for full, fair and just compensation for themselves, and the members of the Class, for all damages directly and proximately flowing from the Defendant County's aforescribed age discrimination including, but not limited to:

- a. Reinstatement of all prior job classifications, pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits.
- b. All lost back pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits.

- c. All financial harm reasonably foreseeable by Defendant at the time it carried out its adverse employment actions.
- d. Compensation for all emotional and mental distress and anxiety which was the natural and foreseeable result of Defendant's conduct.
- e. Attorney's fees, and all costs and expenses of litigation.
- f. All such further relief at law, or in equity, that is fair, just and equitable.

COUNT IV

(Age Discrimination – O.R.C. Section 124.14)

82) Plaintiffs reincorporate as if fully rewritten herein all the preceding allegations of this Complaint, and further state that the age of the Plaintiffs, and the Members of the Class, was an unjust reason for the Defendant's program for their reclassification, in violation of O.R.C. Section 124.14.

83) As the direct and proximate cause of the Defendant's age discrimination, as described above, Plaintiffs, and the Class, have suffered damages, including loss of their prior job classifications, pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits. In addition, they have suffered the emotional and mental distress, and anxiety, which is the reasonably foreseeable result of massive pay cuts, loss of benefits and pension, and being demoted to humiliating job classifications.

WHEREFORE, Plaintiffs further pray for judgment against the Defendant, for full, fair

and just compensation for themselves, and the members of the Class, for all damages directly and proximately flowing from the Defendant County's aforescribed age discrimination including, but not limited to:

- g. Reinstatement of all prior job classifications, pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits.
- h. All lost back pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits.
- i. All financial harm reasonably foreseeable by Defendant at the time it carried out its adverse employment actions.
- j. Compensation for all emotional and mental distress and anxiety which was the natural and foreseeable result of Defendant's conduct.
- k. Attorney's fees, and all costs and expenses of litigation.
- l. All such further relief at law, or in equity, that is fair, just and equitable.

COUNT V

(Political Discrimination – O.R.C. Section 124.14)

84) Plaintiffs reincorporate as if fully rewritten herein all the preceding allegations of this Complaint, and further state that politics was an unjust reason for the Defendant's program for their reclassification, in violation of O.R.C. Section 124.14.

85) As the direct and proximate cause of the Defendant's reclassification of Plaintiffs and the

Class for political reasons, Plaintiffs, and the Class, have suffered damages, including loss of their prior job classifications, pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits. In addition, they have suffered the emotional and mental distress, and anxiety, which is the reasonably foreseeable result of massive pay cuts, loss of benefits and pension, and being demoted to humiliating job classifications.

WHEREFORE, Plaintiffs further pray for judgment against the Defendant, for full, fair and just compensation for themselves, and the members of the Class, for all damages directly and proximately flowing from the Defendant County's aforescribed politically-motivated discrimination including, but not limited to:

- m. Reinstatement of all prior job classifications, pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits.
- n. All lost back pay, compensation, wages, salary, and benefits including, but not limited to, longevity, accrued vacation pay, and retirement and pension benefits.
- o. All financial harm reasonably foreseeable by Defendant at the time it carried out its adverse employment actions.
- p. Compensation for all emotional and mental distress and anxiety which was the natural and foreseeable result of Defendant's conduct.
- q. Attorney's fees, and all costs and expenses of litigation.
- r. All such further relief at law, or in equity, that is fair, just and equitable.

JURY DEMAND

Plaintiff hereby demands a trial by a jury composed of the maximum number of jurors
allowed by law, on all issues so triable

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin T. Roberts", is written over a horizontal line.

KEVIN T. ROBERTS (0037479)

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Attorney for Plaintiff

County Council of Cuyahoga County, Ohio

Ordinance No. _____

Sponsored by: County Executive FitzGerald/Human Resource Commission	An Ordinance providing for the adoption of the Cuyahoga County Civil Service Pay Equity Plan, and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, Section 9.01 of the Charter of Cuyahoga County states that the Human Resource Commission shall be responsible for administering, for and in cooperation with the officers, agencies, boards and commissions of the County, an efficient and economical system for the employment of persons in the public service according to merit and fitness (the "Civil Service System"); and,

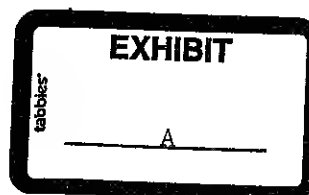
WHEREAS, Section 9.02 of the Charter of Cuyahoga County states that the Human Resource Commission shall have authority to ensure pay equity for like positions; and,

WHEREAS, Section 9.01 of the Charter of Cuyahoga County states that the County's human resources policies and systems shall be established by ordinance and shall be administered in such a manner as will eliminate unnecessary expense and duplication of effort, while ensuring that persons will be employed in the public service without discrimination on the basis of race, color, religion, sex, national origin, sexual orientation, disability, age or ancestry; and,

WHEREAS, the County's current Civil Service System is codified in Chapter 124 of the Ohio Revised Code, Chapter 123:1 of the Ohio Administrative Code, the Cuyahoga County Administrative Rules and the Policies and Procedures Manual; and,

WHEREAS, Section 2.10 of the Cuyahoga County Personnel Policies and Procedures Manual (Ordinances No. O2011-0015 and O2011-0028) states that the employment of all classified County employees is subject to the provisions of the Ohio Revised Code (Chapter 124), the Ohio Administrative Code (Chapter 123:1), the Cuyahoga County Administrative Rules and the Policies and Procedures Manual; and,

WHEREAS, Section 301.23 of the Ohio Revised Code authorizes a charter-created county civil service commission to create a new system for employment with the county on the basis of merit and fitness, as ascertained by competitive examination; and,



WHEREAS, on August 17, 2011, the Human Resource Commission adopted a motion recommending certain amendments to the County's current Civil Service System as codified in Chapter 124 of the Ohio Revised Code, Chapter 123:1 of the Ohio Administrative Code, the Cuyahoga County Administrative Rules and the Policies and Procedures Manual (the "Cuyahoga County Civil Service Pay Equity Plan"); and,

WHEREAS, the amendments proposed by the Human Resource Commission are designed to create pay equity for County employees performing similar duties; and,

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County agency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Council hereby adopts the following changes to the County's current Civil Service System as codified in Chapter 124 of the Ohio Revised Code, Chapter 123:1 of the Ohio Administrative Code, the Cuyahoga County Administrative Rules and the Policies and Procedures Manual (the "Cuyahoga County Civil Service Pay Equity Plan") (added language underlined; deleted language in ~~strike through~~; sub-sections that are either deleted or remain in their entirety are noted in *italics* and parenthesis):

The Cuyahoga County Pay Equity Plan

A. **OHIO REVISED CODE:** The following sections of Chapter 124 of the Ohio Revised Code are hereby amended as they apply to County employees. All sections in Chapter 124 that are not specifically identified in bold below remain in full effect in their entirety.

124.14 - Job Classification - Pay Ranges.

(A)(1) ~~The director of administrative services~~Director of Human Resources shall establish, and may modify or rescind, subject to approval by the Human Resource Commission, the County Executive, and County Council by rule, a job classification plan ~~for all positions, offices, and employments the salaries of which are paid in whole or in part by the state~~in accordance with the requirements of Section 9.04 of the Cuyahoga County Charter. The Director shall group jobs within a classification so that the positions are similar enough in duties and responsibilities to be described by the same title, to have the same pay assigned with equity, and to have the same qualifications for selection applied. The Director shall, ~~by rule,~~ assign a classification title to each classification within the classification plan. However, the Director shall consider in establishing classifications, including classifications with parenthetical titles, and assigning pay ranges such factors as duties performed only on one shift, special skills in short supply in the labor market, recruitment problems, separation rates, comparative salary rates, the amount of training required, and other conditions affecting employment. The Director shall describe the duties and responsibilities of the class, and establish the qualifications for being employed in each position in the class, ~~and file with the secretary of state a copy of specifications for all of the~~

~~classifications. The director shall file new, additional, or revised specifications with the secretary of state before they are used.~~

~~The Director shall, by rule, assign each classification, either on a statewide basis or in particular counties or state institutions, to an equitable pay range established under section 124.15 or section 124.152 of the Revised Code. The director may assign a classification to a pay range on a temporary basis for a period of six months. The director may establish, by rule adopted under Chapter 119, of the Revised Code, experimental classification plans for some or all employees paid directly by warrant of the director of budget and management. The rule shall include specifications for each classification within the plan and shall specifically address compensation ranges, and methods for advancing within the ranges, for the classifications, which may be assigned to pay ranges other than the pay ranges established under section 124.15 or 124.152 of the Revised Code.~~

~~(2) The Director of administrative services may reassign to a proper classification those positions and/or employees that have been assigned to an improper classification. The Director may also assign a proper classification to a County employee who qualifies for classification but has not previously been assigned to one. If a reassignment or new assignment occurs, the compensation of an employee in such a reassigned position exceeds the maximum rate of pay for the employee's new classification, the employee shall be placed in an equitable pay step X in the applicable pay range for the new classification and shall not receive an increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification.~~

~~(3) (Deleted in its entirety)~~

~~(4) The Director shall, by rule, subject to approval by the Human Resource Commission, the County Executive, and County Council, assign related classifications, which form a career progression, to a classification series. The Director shall, by rule, subject to approval by the Human Resource Commission, the County Executive and County Council, assign each classification in the classification plan a five-digit number, the first four digits of which shall denote the classification series to which the classification is assigned. When a career progression encompasses more than ten classifications, the Director shall, by rule, subject to approval by the Human Resource Commission, the County Executive and County Council, identify the additional classifications belonging to a classification series. The additional classifications shall be part of the classification series, notwithstanding the fact that the first four digits of the number assigned to the additional classifications do not correspond to the first four digits of the numbers assigned to other classifications in the classification series.~~

~~(5) (Deleted in its entirety)~~

~~(B) Division (A) of this section and sections 124.15 and 124.152 of the Revised Code do not apply to the following persons, positions, offices, and employments: Division (A) of this section only applies to those positions identified in Section 9.03 of the Charter.~~

~~(1) (Deleted in its entirety)~~

(2) *(Deleted in its entirety)*

(3) *(Deleted in its entirety)*

(4) *(Deleted in its entirety)*

(5) *(Deleted in its entirety)*

(C) *(Retained in its entirety)*

(D)(1) When the Director proposes to modify a classification or the assignment of classes to appropriate pay ranges, the Director shall send written notice of the proposed rule to the appointing authorities of the affected employees ~~thirty days before a hearing on the proposed rule~~ Human Resource Commission. ~~The appointing authorities shall notify the affected employees regarding the proposed rule. The director also shall send those appointing authorities notice of any final rule that is adopted within ten days after adoption~~ The Human Resource Commission shall review the proposed action in an open meeting. If the Human Resource Commission approves of the proposed action, it shall submit the proposed action to County Council.

(2) When the Director proposes to ~~reclassify-reassign~~ any employee or reclassify any position so that ~~an~~ the employee is adversely affected, the Director shall give to the employee affected and to the employee's appointing authority a written notice setting forth the proposed new classification, pay range and step, and salary. If the reclassification results in a reduction in salary, the employee shall be offered an opportunity to meet with the Director or designee to dispute the proposed change. Subsequent to this meeting, or the employee's waiver of this meeting, the Director shall provide the employee written notice of the final decision regarding the proposed reduction. The employee may then file an appeal of the Director's final decision to the Human Resource Commission in accordance with the process described below.

Upon the request of any classified employee who is not serving in a probationary period, the Director shall perform a job audit to review the classification of the employee's position to determine whether the position is properly classified. The Director shall give to the employee affected and to the employee's appointing authority a written notice of the Director's determination whether or not to reclassify the position or to reassign the employee to another classification. An employee ~~or appointing authority~~ desiring a hearing shall file a written request for the hearing with the state personnel board of review Human Resource Commission ~~within thirty days after receiving the notice~~ the timeframe as set forth in the Human Resource Commission's Rules. The Commission ~~board~~ shall set the matter for a hearing and notify the employee and appointing authority of the time and place of the hearing. The employee, the appointing authority, or any authorized representative of the employee who wishes to submit facts for the consideration of the board shall be afforded reasonable opportunity to do so. After the hearing, the ~~board~~ Commission shall consider anew the reclassification and may order the reclassification of the employee and require the Director to assign the employee to such appropriate classification as the facts and evidence warrant. As provided in division (A)(1) of section 124.03 of the Revised Code, the ~~board~~ Commission may determine the most appropriate classification for the position of any employee coming before the board, with or without a job audit. The ~~board~~ Commission shall disallow any reclassification or reassignment classification of

any employee when it finds that changes have been made in the duties and responsibilities of any particular employee for political, religious, or other unjust reasons.

(E) *(Deleted in its entirety)*

(F) *(Deleted in its entirety)*

(G) *(Retained in its entirety)*

(H) *(Deleted in its entirety)*

(I) The Director shall set the rate of compensation for all intermittent, seasonal, temporary, emergency, and casual employees in the service of the County who are not considered public employees under section 4117.01 of the Revised Code. ~~Those employees are not entitled to receive employee benefits. This rate of compensation shall be equitable in terms of the rate of employees serving in the same or similar classifications. This division does not apply to elected officials, legislative employees, employees of the legislative service commission, employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the secretary of state, auditor of state, treasurer of state, and attorney general, employees of the courts, employees of the bureau of workers' compensation whose compensation the administrator establishes under division (B) of section 4121.121 of the Revised Code, or employees of an appointing authority authorized by law to fix the compensation of these employees.~~

124.34 - Reduction in Pay or Position - Suspension - Removal.

(A) The tenure of every officer or employee in the classified service of the state and the counties, civil service townships, cities, city health districts, general health districts, and city school districts of the state, holding a position under this chapter, shall be during good behavior and efficient service. No officer or employee shall be reduced in pay or position, fined, suspended, or removed except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. The denial of a one-time pay supplement or a bonus to an officer or employee is not a reduction in pay for purposes of this section

This section does not apply to any modifications or reductions in pay authorized by division (A)(2) of Section 124.14, division (O) of section 124.181 or section 124.392 or 124.393 of the Revised Code.

An appointing authority may require an employee who is suspended to report to work to serve the suspension. An employee serving a suspension in this manner shall continue to be compensated at the employee's regular rate of pay for hours worked. The disciplinary action shall be recorded in the employee's personnel file in the same manner as other disciplinary

actions and has the same effect as a suspension without pay for the purpose of recording disciplinary actions.

A finding by the appropriate ethics commission, based upon a preponderance of the evidence, that the facts alleged in a complaint under section 102.06 of the Revised Code constitute a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code may constitute grounds for dismissal. Failure to file a statement or falsely filing a statement required by section 102.02 of the Revised Code may also constitute grounds for dismissal. The tenure of an employee in the career professional service of the department of transportation is subject to section 5501.20 of the Revised Code.

Conviction of a felony is a separate basis for reducing in pay or position, suspending, or removing an officer or employee, even if the officer or employee has already been reduced in pay or position, suspended, or removed for the same conduct that is the basis of the felony. An officer or employee may not appeal to the state personnel board of review or the commission any disciplinary action taken by an appointing authority as a result of the officer's or employee's conviction of a felony. If an officer or employee removed under this section is reinstated as a result of an appeal of the removal, any conviction of a felony that occurs during the pendency of the appeal is a basis for further disciplinary action under this section upon the officer's or employee's reinstatement.

A person convicted of a felony immediately forfeits the person's status as a classified employee in any public employment on and after the date of the conviction for the felony. If an officer or employee is removed under this section as a result of being convicted of a felony or is subsequently convicted of a felony that involves the same conduct that was the basis for the removal, the officer or employee is barred from receiving any compensation after the removal notwithstanding any modification or disaffirmance of the removal, unless the conviction for the felony is subsequently reversed or annulled.

Any person removed for conviction of a felony is entitled to a cash payment for any accrued but unused sick, personal, and vacation leave as authorized by law. If subsequently reemployed in the public sector, the person shall qualify for and accrue these forms of leave in the manner specified by law for a newly appointed employee and shall not be credited with prior public service for the purpose of receiving these forms of leave.

As used in this division, "felony" means any of the following:

- (1) A felony that is an offense of violence as defined in section 2901.01 of the Revised Code;
- (2) A felony that is a felony drug abuse offense as defined in section 2925.01 of the Revised Code;
- (3) A felony under the laws of this or any other state or the United States that is a crime of moral turpitude;
- (4) A felony involving dishonesty, fraud, or theft;
- (5) A felony that is a violation of section 2921.05, 2921.32, or 2921.42 of the Revised Code.

(B) In case of a reduction, a suspension of more than forty work hours in the case of an employee exempt from the payment of overtime compensation, a suspension of more than twenty-four work hours in the case of an employee required to be paid overtime compensation, a fine of more than forty hours' pay in the case of an employee exempt from the payment of overtime compensation, a fine of more than twenty-four hours' pay in the case of an employee required to be paid overtime compensation, or removal, except for the reduction or removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action.

~~Within ten days following the date on which the order is served or, in the case of an employee in the career professional service of the department of transportation, within ten days following the filing of a removal order, the employee, except as otherwise provided in this section, may file an appeal of the order in writing with the state personnel board of review or the commission. For purposes of this section, the date on which an order is served is the date of hand delivery of the order or the date of delivery of the order by certified United States mail, whichever occurs first. An employee may appeal such order in accordance with the Rules set forth by the Human Resource Commission. If an appeal is filed, the board or commission~~Human Resource Commission ~~shall forthwith notify the appointing authority and shall hear, or appoint a trial board hearing officer to hear, the appeal within thirty days from and after its filing with the board or commission. The board, commission, or trial board~~Human Resource Commission ~~may affirm, disaffirm, or modify the judgment of the appointing authority. However, in an appeal of a removal order based upon a violation of a last chance agreement, the board, commission, or trial board~~Human Resource Commission ~~may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment of the appointing authority.~~

~~In cases of removal or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the state personnel board of review or the commission, and any such appeal shall be to the court of common pleas of the county in which the appointing authority is located, or to the court of common pleas of Franklin county, as provided by section 119.12 of the Revised Code. Either the employee or the appointing authority may appeal the decision of the Human Resource Commission to the Cuyahoga County Court of Common Pleas in accordance with general law.~~

(C) *(Deleted in its entirety)*

(D) A violation of division (A)(7) of section 2907.03 of the Revised Code is grounds for termination of employment of a nonteaching employee under this section

(E) As used in this section, "last chance agreement" means an agreement signed by both an appointing authority and an officer or employee of the appointing authority that describes the type of behavior or circumstances that, if it occurs, will automatically lead to removal of the officer or employee without the right of appeal to the state personnel board of review or the appropriate commission.

B. OHIO ADMINISTRATIVE CODE - The following section of Chapter 123:1 of the Ohio Administrative Code is hereby amended as it applies to County employees. All sections in Chapter 123:1 that are not specifically identified in bold below remain in full effect in their entirety.

123:1-7-22 – Reassignments by the Director of Human Resources Resulting in Placing an Employee in Step X

(A) The Director may reassign to a proper classification those positions and/or employees that have been assigned to an improper classification. The Director may also assign a proper classification to a County employee who qualifies for classification but has not previously been assigned to one. If a reassignment or new assignment occurs, the employee shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification. Such placement may result in the employee maintaining their current salary, or may result in an increase or reduction in salary.

If the reclassification results in a reduction in salary, the employee shall be offered an opportunity to meet with the Director or designee to dispute the proposed change. Subsequent to this meeting, or the employee's waiver of this meeting, the Director shall provide the employee written notice of the final decision regarding the proposed reduction. The employee may then file an appeal of the Director's final decision to the Human Resource Commission in accordance with the Commission's rules.

An employee whose position is determined to be overclassified shall be properly classified and may be placed in step X pursuant to section 124.14 of the Revised Code only as a result of any of the following:

- (1) A position audit conducted in accordance with rule 123:1 3-01 of the Administrative Code;
- (2) A class plan change;
- (3) A classification assigned by the state personnel board of review or an arbitrator's decision; or
- (4) At the approval of the director.

(B) (Deleted in its entirety)

(C) (Deleted in its entirety)

C. CUYAHOGA COUNTY ADMINISTRATIVE RULES - The following section of the Cuyahoga County Administrative Rules is hereby amended. All sections in the Cuyahoga County Administrative Rules that are not specifically identified in bold below remain in full effect in their entirety.

Rule No. 3 – Position Audits

The Director of Human Resources may initiate a position audit and reassign to a proper classification those positions and/or employees that have been assigned to an improper classification. The Director may also assign a proper classification to a County employee who qualifies for classification but has not previously been assigned to one.

Non-probationary, non-bargaining, classified employees who believe that their duties have changed significantly and feel that their classification is no longer appropriate may request a position audit. An employee wishing to initiate a position audit shall submit their request in writing to the Director of Human Resources. Upon receipt of the employee's request, or upon request of the Director of Human Resources, Human Resources shall forward a Comprehensive Position Questionnaire (CPQ) to the employee for completion. The CPQ will be accompanied by a cover letter and instructions for completing the CPQ. The cover letter will also be sent to the employee's Department Director.

The employee shall return the completed CPQ forms to Human Resources within thirty (30) days of receipt. The employee may request in writing to the Director of Human Resources a **onetime** extension of time in which to complete the CPQ. The deadline, however, may not be extended beyond thirty (30) days after the original due date.

Human Resources will review all submitted information and will make a determination as to the appropriate classification. To meet the classification criteria, an employee must perform the mandatory duties stated in the classification function at least 20% of the time. Prior to rendering a decision on the position audit request, Human Resources reserves the right to conduct an on-site audit. Upon completion of their review, Human Resources will ~~send results of the~~ provide written notice of the position audit to the employee by certified mail to the address listed on the employee's Request for Position Audit Form with a copy to the Department Director. If the reclassification results in a reduction in salary, the employee shall be offered an opportunity to meet with the Director or designee to dispute the proposed change. Subsequent to this meeting, or the employee's waiver of this meeting, the Director shall provide the employee written notice of the final decision regarding the proposed reduction.

The employee has the right to appeal the decision rendered by Human Resources. This must be done in writing to the Cuyahoga County Human Resources Commission (HRC) within the time frame set forth in the Human Resource Commission's Rules

If a reassignment or new assignment occurs, the employee shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification.

~~If the position audit results in the employee being reassigned to a classification in a higher pay range, the employee's rate of pay shall be adjusted to either the minimum of the new pay range or to the lowest step in the range which will reflect an increase of at least 5%, whichever is the greater increase.~~

~~If the position audit results in the employee being reassigned to a classification in a lower pay range, the employee's rate of pay will not be reduced. If the compensation of the reassigned employee exceeds the maximum step of the new pay range, however, the employee will be placed in step X and will not receive an increase in compensation until the maximum rate of pay for the new classification exceeds the employee's rate of pay.~~

~~If the position audit results in no change in the employee's classification, but a change in the pay range assignment of the classification, the employee will be shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification, adjusted to the same step in the new pay range.~~

~~If the position audit results in the employee being reassigned to a classification in a higher pay range, receiving a higher salary, any salary adjustment will be computed retroactive to the beginning of the first pay period following the date that the written request for the position audit was received by Human Resources. If the position audit results in the employee receiving a lower salary, any salary adjustment will begin the first day of the first pay period following the date of the final decision by the Director of Human Resources. If the position audit results in the creation of a new classification and/or pay range, any salary adjustment will be effective the first pay period following approval of the new classification and/or pay range by the BOCC-County (i.e., not retroactive)~~

~~If, after conducting a position audit on an employee, Human Resources becomes aware of similarly situated employees, it will reassign the other employees, effective the beginning of the first pay period following the date that the decision was rendered on behalf of the employee that had requested the audit. For purposes of this section, a "similarly situated employee" is an employee that performs the same essential job functions and responsibilities as the audited employee. Similarly situated employees will not be entitled to retroactive pay increases.~~

D. CUYAHOGA COUNTY PERSONNEL POLICIES AND PROCEDURES MANUAL -

The following section the Cuyahoga County Personnel Policies and Procedures Manual is hereby amended. All sections in the Cuyahoga County Personnel Policies and Procedures Manual that are not specifically identified in bold below remain in full effect in their entirety.

Section 5.09 – Non-Bargaining Position Audits

The Director of Human Resources may initiate a position audit and reassign to a proper classification those positions and/or employees that have been assigned to an improper classification. The Director may also assign a proper classification to a County employee who qualifies for classification but has not previously been assigned to one.

Non-probationary, non-bargaining, classified employees who believe that their duties have changed significantly and feel that their classification is no longer appropriate may request a position audit.

An employee wishing to initiate a position audit shall submit their request in writing to the Director of Human Resources. Upon receipt of the employee's request, or upon request of the Director of Human Resources, Human Resources shall forward a Comprehensive Position Questionnaire (CPQ) to the employee for completion. The CPQ will be accompanied by a cover letter and instructions for completing the CPQ. The cover letter will also be sent to the employee's Department Director.

The employee shall return the completed CPQ forms to Human Resources within thirty (30) days of receipt. The employee may request in writing to the Director of Human Resources a **onetime** extension of time in which to complete the CPQ. The deadline, however, may not be extended beyond thirty (30) days after the original due date.

Human Resources will review all submitted information and will make a determination as to the appropriate classification. To meet the classification criteria, an employee must perform the mandatory duties stated in the classification function at least 20% of the time. Prior to rendering a decision on the position audit request, Human Resources reserves the right to conduct an on-site audit. Upon completion of their review, Human Resources will ~~send results of the~~ provide written notice of the position audit to the employee by certified mail to the address listed on the employee's Request for Position Audit Form with a copy to the Department Director. If the reclassification results in a reduction in salary, the employee shall be offered an opportunity to meet with the Director or designee to dispute the proposed change. Subsequent to this meeting, or the employee's waiver of this meeting, the Director shall provide the employee written notice of the final decision regarding the proposed reduction.

The employee has the right to appeal the decision rendered by Human Resources. This must be done in writing to the Cuyahoga County Human Resources Commission (HRC) within ~~thirty (30) days of receipt of the letter of notification from Human Resources~~ the time frame set forth in the Human Resource Commission's Rules.

NOTE: Employees may lose their appeal rights if their own negligence caused them to fail to receive the position audit decision from Human Resources (i.e., failure to list correct mailing address on Request for Position Audit Form or failure to sign for the certified letter).

If a reassignment or new assignment occurs, the employee shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification.

If the position audit results in the employee being reassigned to a classification in a higher pay range, the employee's rate of pay shall be adjusted to either the minimum of the new pay range or to the lowest step in the range which will reflect an increase of at least 5%, whichever is the greater increase.

If the position audit results in the employee being reassigned to a classification in a lower pay range, the employee's rate of pay will not be reduced. If the compensation of the reassigned employee exceeds the maximum step of the new pay range, however, the employee will be placed in step X and will not receive an increase in compensation until the maximum rate of pay for the new classification exceeds the employee's rate of pay.

If the position audit results in no change in the employee's classification, but a change in the pay range assignment of the classification, the employee ~~will be~~ shall be placed in an equitable pay step in the applicable pay range for the new classification. Determination of the equitable pay step shall be based on a review of the employee's relative skill level, education and experience as compared to the employees currently existing in the classification adjusted to the same step in the new pay range.

If the position audit results in the employee being reassigned to a classification in a higher pay range ~~receiving a higher salary~~, any salary adjustment will be computed retroactive to the beginning of the first pay period following the date that the written request for the position audit was received by Human Resources. If the position audit results in the employee receiving a lower salary, any salary adjustment will begin the first day of the first pay period following the date of the final decision by the Director of Human Resources. If the position audit results in the creation of a new classification and/or pay range, any salary adjustment will be effective the first pay period following approval of the new classification and/or pay range by the County (i.e., not retroactive).

If, after conducting a position audit on an employee, Human Resources becomes aware of similarly situated employees, it will reassign the other employees, effective the beginning of the first pay period following the date that the decision was rendered on behalf of the employee that had requested the audit. For purposes of this section, a "similarly situated employee" is an employee that performs the same essential job functions and responsibilities as the audited employee. Similarly situated employees will not be entitled to retroactive pay increases.

~~An employee may withdraw the request for a position audit at any time prior to a decision being rendered.~~ An employee may not request a position audit more than once in a twelve-month (12) rolling period unless documentation acceptable to the Director of Human Resources is provided at the time of the second request that the job has substantially changed since the date of the completion of the previous audit.

An employee who has received a classification change pursuant to this Section is not required to serve a new probationary period.

NOTE: Bargaining unit employees should refer to their collective bargaining agreement for information on position audits.

SECTION 2. It is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue, and to continue the usual and daily operation of a County agency. Provided that this Ordinance receives the affirmative vote of eight members of Council, this Ordinance shall become immediately effective upon the signature of the County Executive

SECTION 3. It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by _____, seconded by _____, the foregoing Resolution was duly adopted.

Yeas:

Nays: _____

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: _____

Committee Assigned: _____

Journal _____



Cuyahoga County lays off 33 employees, many of them holdovers from the office of corrupt former Auditor Frank Russo

Published: Wednesday, November 02, 2011, 12:11 PM Updated: Wednesday, November 02, 2011, 7:32 PM

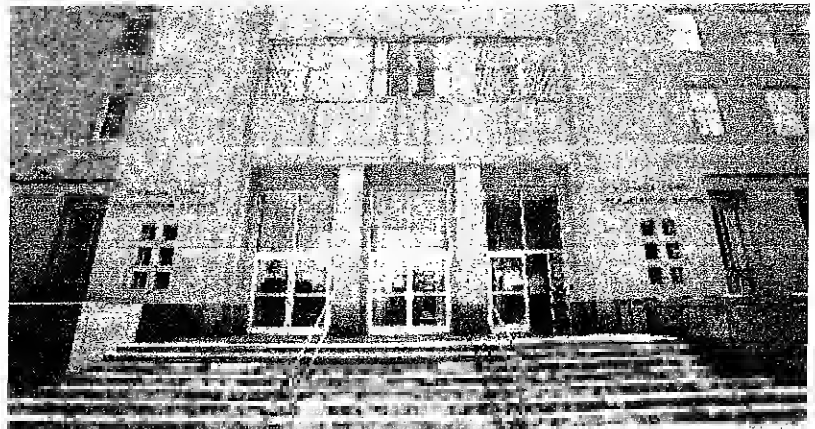


By **Laura Johnston, The Plain Dealer**

UPDATED AT 6:13 P.M.

CLEVELAND, Ohio -- Cuyahoga County Executive Ed FitzGerald on Wednesday laid off 33 employees, many of them holdovers from the office of corrupt former Auditor Frank Russo.

Among those losing their jobs were a daughter of disgraced former Sheriff Gerald McFaul and a sister of Parma Mayor Dean DePiero, both of whom worked for Russo before he resigned last year and pleaded guilty to bribery and other crimes.



Joshua Gunter, Plain Dealer file

Cuyahoga County Administration Building, where fiscal office employees are losing their jobs today.

FitzGerald, who took office in January as chief of a new charter government, promised during his campaign to rid the county workforce of unneeded and unqualified employees.

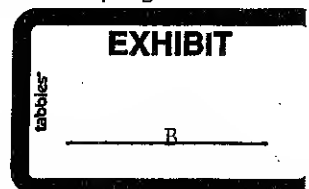
"We couldn't keep things going the way they were," he said in a Wednesday news conference.

The latest purge will save \$1.7 million in salaries and benefits, atop \$17.6 million the county has **already cut from payroll this year**, as more than 300 employees resigned, retired, were laid off or fired.

FitzGerald said the positions eliminated Wednesday were redundant because a new fiscal office consolidated the offices of recorder and auditor.

In determining the number of cuts, county administrators analyzed workloads and compared staffing levels in other counties. The layoffs were made based on seniority in each job classification.

FitzGerald expects more layoffs in the fiscal office and human resources later this year, once County Council



approves new civil service classifications.

FitzGerald and the 11-member council inherited a jumble of employees overseen by Russo and other independently elected officials, who created their own hiring processes and pay scales.

A state audit last year found that Russo's office was overstaffed and overpaid, that he had no hiring process and no formal plan for establishing salaries.

Among the senior clerks laid off on Wednesday, salaries ranged from \$21,000 to \$49,000.

The 33 employees had worked for Russo and former Recorder Lillian Greene. Officials could not provide a breakdown by office.

"We're trying to correct the poor management decisions of prior administrations," said Fiscal Officer Wade Steen.

To get a handle on the mess -- and to merge the offices of auditor and recorder as required by the county charter -- FitzGerald hired South Carolina-based Archer Co., which analyzed employee questionnaires and job descriptions in an 18-week study.

County Council gave initial approval last week to new job classifications, which will also be used to standardize wages.

A number of employees will have their **pay cut** as they are slotted into the system and placed in categories appropriate to their skills, education and experience, FitzGerald said. How much more money the county will save is unclear.

Among those who lost their jobs Wednesday were:

- Colleen McFaul-Vincelli, a \$36,000-a-year senior clerk, who is the daughter of former Sheriff McFaul, who pleaded guilty last year to two felony theft-in-office convictions and a misdemeanor ethics violation.
- Lisa DePiero, a \$65,000-a-year senior public information officer, who is the sister of Parma Mayor Dean DePiero.
- Gregory Urbanek, an \$62,000-a-year examiner, who was described in the federal corruption investigation as receiving the job because of a bribe his brother-in-law paid to Russo. He has not been charged with a crime.

None of the workers could be reached for comment. McFaul-Vincelli may be able to exercise seniority rights and get another job in the county, FitzGerald said.

FitzGerald said politics did not figure into the layoffs. "You can't pick and choose," he said.

Employees can protest their pay cuts or lost jobs to a newly created Human Resource Commission.

So far, 24 former employees have filed appeals, including 10 for layoffs. Hearings have not yet begun.

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Dozens of Cuyahoga County workers informed their pay will be cut

Published: Sunday, January 08, 2012, 12:01 AM Updated: Sunday, January 08, 2012, 9:41 AM



By **Amanda Garrett, The Plain Dealer**

CLEVELAND, Ohio -- Dozens of people who work in Cuyahoga County's fiscal office are about to face fiscal crises of their own.

The county in February will slash wages of 89 employees by as much as \$29,200 a year, saving taxpayers about \$735,000 annually.

News of the pay cuts began arriving in letters mailed to employees' homes on Saturday, a day after a federal jury was seated in the public corruption and racketeering trial of former County Commissioner and Democratic Party boss Jimmy Dimora. Most facing the biggest reductions once worked for corrupt former County Auditor Frank Russo, expected to be prosecutors' star witness against Dimora, Russo's close friend and even closer political ally.

The rest of the county employees facing cuts worked in the offices of former Recorder Lillian Greene and former Treasurer Jim Rokakis, neither of whom has been implicated in the corruption scandal that has engulfed about 60 elected officials, government employees and contractors.

The auditor's, recorder's and treasurer's offices were consolidated into a fiscal office last year after voters, many infuriated by the far-reaching corruption scandal, overwhelmingly approved a new charter form of county government.

Saturday evening, County Executive Ed FitzGerald said no one should be surprised by the pay cuts because he has been discussing them in meetings with workers and with the media for months.



[View full size](#)

Scott Shaw, Plain Dealer file photo

Cuyahoga County Executive Ed FitzGerald: "Some of these folks will have to take a good, long look at whether they want to work for the county."

"There had been gross distortions in pay raises. Some employees were making more than their supervisors," he said.

"Some of these folks will have to take a good, long look at whether they want to work for the county."

Unhappy employees can appeal the pay cuts, first to the county's Human Resources Department and then to the three-member Human Resources Commission.

County Human Resources Director Elise Hara said Saturday that she expects most employees will fight the cuts but that she doesn't anticipate many will prevail.

The reductions follow the findings of a North Carolina-based consultant, Archer Co., hired by the county last year to examine which workers do what and how much each should be paid.

Based on Archer's recommendations, 27 employees' wages will be reduced more than \$10,000, Hara said. Most of the rest of the reductions are in the thousands of dollars, she said, noting that the smallest pay cut is \$214 per year.

Not all fiscal office workers will lose money.

Hara said Archer found that six employees were underpaid. Those workers began receiving letters Saturday saying their annual wages will rise between \$8 and \$5,711.

But the annual total of the increases -- \$17,836 -- is a fraction of the amount saved by others' pay cuts, Hara said.

A handful of other county workers should expect pay decreases in coming months as the county streamlines its staff, FitzGerald and Hara said, but not nearly so many as in the fiscal office.

To reach this Plain Dealer reporter: agarrett@plained.com, 216-999-4814

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County pay cuts

89 Employees in the county's fiscal office who will get pay cuts.

\$29,200 Highest yearly reduction.

\$735,000 How much the cuts could save taxpayers.

6 Number of employees who will get raises.



Everything Cleveland

Cuyahoga County cuts pay for relatives of auditor's deputy Santina Klimkowski

Published: Tuesday, January 10, 2012, 7:17 AM Updated: Tuesday, January 10, 2012, 7:46 AM



By **Laura Johnston, The Plain Dealer**

CLEVELAND, Ohio -- The son-in-law of former Cuyahoga County auditor's deputy **Santina Klimkowski** -- who confessed last year to conspiring with her crooked boss, Frank Russo, in a million-dollar bribery scheme -- will lose the biggest chunk of salary in a reorganization of the county's fiscal office.

Raymond Rogers, whom a state panel forced the county to rehire with back pay last month, will have his \$67,000 salary slashed by \$29,200. His wife, Lisa Rogers, will lose \$2,800 from her \$48,000-a-year pay.

All told, **90 county employees will see pay cuts** in February based on an 18-week analysis of the pay and job qualifications of workers that the new charter government inherited from the now defunct offices of auditor, recorder and treasurer.

The list also includes:

- Bruce Nimrick, the former campaign treasurer for former county Treasurer Jim Rokakis, whose \$85,000 salary will fall \$13,500.
- Monica Hagan, a former Russo employee and the sister of former county Commissioner Tim Hagan. Her \$50,000 salary will drop \$8,500.
- James Iafelice, a former Russo employee who averaged six hours a day for the 371 days between 2008 and 2009



Thomas Ondrey, Plain Dealer file

Santina Klimkowski, former Cuyahoga County employee accused of funneling bribes to her boss Frank Russo, in 2011. Her son-in-law, Raymond Rogers, will have his salary cut in a county reorganization.

EXHIBIT

D

that his key card was used to access the county parking garage. His \$49,900 salary will be cut \$4,700.

Russo has pleaded guilty to 21 corruption-related charges and is assisting federal officials in an attempt to reduce a 22-year prison sentence. He is one of nearly 60 elected officials, public employees and business executives who have pleaded guilty in the sweeping federal corruption investigation.

The State Personnel Board of Review ruled last year that Russo improperly fired the couple during the spring of 2010 after Klimkowski had informed on the auditor to **federal corruption investigators**.

The operations of the auditor, recorder and treasurer were consolidated into a fiscal office last year after voters, many infuriated by the far-reaching corruption scandal, overwhelmingly approved a new charter form of county government.

County Executive Ed FitzGerald and the 11-member County Council are now using the study to straighten out the jumble of employees once overseen by the independently elected officials, who created their own hiring processes and pay scales.

The human resources department has already set meetings this week for appeals of the pay cuts. Employees can later request hearings before the county's Human Resources Commission.

Cuts will go into effect in February, said human resources Director Elise Hara.

Six employees will have their pay increased under the reorganization. Another 117 will keep their salaries but receive new titles. The changes will save taxpayers nearly \$720,000.

"We had no idea who these folks would be," said Hara. "Nobody was targeted. This was all done objectively."

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